

January 9, 2003

By Electronic Delivery

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

**Re: Applications for Consent to the Transfer of Control of Licenses
from Comcast Corporation and AT&T Corp., Transferors, to
AT&T Comcast Corporation, Transferee, MB Docket No. 02-70**

Dear Ms. Dortch:

As a condition of its approval of the above-referenced applications, the Commission required Comcast Corporation ("Comcast") to comply with the cable/SMATV cross-ownership rule, 47 C.F.R. § 76.501(d), within 60 days after closing of the Comcast/AT&T Broadband merger, or by January 17, 2003.¹ For the reasons stated below, Comcast hereby requests an additional 45 days, to and including March 3, 2003, to comply with this rule.

I. Background

Section 76.501(d) of the Commission's rules states that "[n]o cable operator shall offer satellite master antenna television service ('SMATV') ... separate and apart from any franchised cable service in any portion of the franchise area served by that cable operator's cable system, either directly or indirectly through an affiliate owned, operated, controlled, or under common control with the cable operator."² The Commission has interpreted this rule to permit a cable operator to construct or acquire a SMATV system in its franchised service area provided the service transmitted over the SMATV system

¹ *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Comcast Corp., Transferors, to AT&T Comcast Corporation, Transferee*, Memorandum Opinion and Order, MB Docket No. 02-70, FCC 02-310 (rel. Nov. 14, 2002); Erratum, MB Docket No. 02-70 (rel. Nov. 15, 2002) (collectively referred to as the "*Merger Order*"). On November 18, 2002, Comcast Corporation and AT&T Corp. ("AT&T") consummated their agreement to combine Comcast Corporation and AT&T's broadband business. The company formed by this merger is named "Comcast Corporation," not AT&T Comcast Corporation, as previously announced.

² 47 C.F.R. § 76.501(d). *See also* 47 U.S.C. § 533(a).

“is offered together with or as part of the cable service provided pursuant to [the cable operator’s] local cable franchise agreement.”³

In the Applications and Public Interest Statement (at 51 n.97) submitted February 28, 2002 in this proceeding (“Application”), Comcast and AT&T Corp. (“AT&T”) identified two SMATV systems owned by Comcast that would implicate the cable/SMATV cross-ownership rule as the result of the Comcast/AT&T Broadband merger.⁴ In addition to these systems, Comcast has acquired a number of other SMATV systems that implicated this cross-ownership rule. Comcast and AT&T committed that the merged entity would either sell these SMATV systems or integrate them into the appropriate cable franchise service to comply with the cable/SMATV cross-ownership rule as soon as possible.⁵

As noted, in approving the Comcast/AT&T Broadband merger, the Commission required Comcast to comply with the cable/SMATV cross-ownership rule within 60 days, or by January 17, 2002.⁶ Comcast has worked diligently to satisfy this requirement. Of the SMATV systems described above, the large majority has been or soon will be integrated into the Comcast franchised cable service in their respective areas and therefore will be in compliance with the rule. Comcast, however, owns attributable interests in five other SMATV systems that present particularly difficult issues involving contract negotiations with third parties and the construction of new facilities that must be resolved before these systems can comply with the cable-SMATV cross-ownership rule. One of these systems is located in Hartford, Connecticut in a franchise area served by an AT&T Broadband cable system. The other four systems are located in Indiana in franchise areas served by Insight Midwest L.P. (“Insight”), in which Comcast now holds an attributable interest as a result of the Comcast/AT&T Broadband merger.

Comcast consequently will need additional time to take the necessary steps to ensure that its SMATV systems are fully integrated with the appropriate franchised cable

³ *Implementation of Section 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992*, Memorandum Opinion and Order on Reconsideration of the First Report and Order, 10 FCC Rcd 4654, ¶ 22 (1995) (“1995 Reconsideration Order”).

⁴ As stated in the Application, at 51 n.97, Comcast also owns a small number of SMATV systems located in franchise areas served by cable systems operated by Time Warner Entertainment Company, L.P. (“TWE”). As the Commission has recognized, however, Comcast does *not* hold an attributable interest in these TWE cable systems, and therefore these SMATV systems do not violate the cable/SMATV cross-ownership rule. *See Merger Order* ¶ 66 (“we will not treat TWE as an attributable interest for purposes of our analysis of potential harms in this or other arenas”).

⁵ *Application* at 51 n.97.

⁶ *See, supra*, n.1.

service. Comcast accordingly requests an additional 45 days, to and including March 3, 2003, to comply with the cable/SMATV cross-ownership rule.

II. Hartford SMATV System

The Comcast SMATV system in Hartford, Connecticut serves approximately 325 subscribers in an apartment building located at 24 Park Place.⁷ It is located within a franchise area served by an AT&T Broadband cable system that is now owned by Comcast. Comcast plans to integrate this SMATV system into the franchised cable service it provides in Hartford and thereby comply with the cable/SMATV cross-ownership rule.

Comcast is taking a number of steps to implement this integration and ensure that the service provided to these subscribers complies with the applicable franchise requirements and also with Comcast's contractual obligations with the building owner. First, as required by its service agreement with the building owner, on December 3, 2002, Comcast gave 90 days notice of termination of the existing service agreement to the building owner; this 90-day notice period expires March 3, 2003. Second, Comcast has been negotiating a new service agreement with the building owner to provide its franchised cable service to the building; Comcast anticipates that it will complete these negotiations and enter into an agreement with the building owner this month. Finally, Comcast will need to interconnect the building with its cable plant serving the Hartford franchise area. This physical interconnection is required to satisfy uniform service and other requirements set forth in the local franchising agreement. Comcast has obtained the necessary construction permits for this work, and estimates it will take approximately three weeks to complete the necessary construction once a new agreement is signed with the building owner.

An additional 45 days to comply with the cable/SMATV cross-ownership rule would permit Comcast to finalize negotiations for a new service agreement with the building owner and complete the necessary construction to integrate this Hartford SMATV system into its cable franchise service.

III. SMATV Systems in Insight Service Areas

As noted above, Comcast currently owns four SMATV systems in Indiana that are located in franchise areas served by Insight cable systems. As the result of the Comcast/AT&T Broadband merger, Comcast owns a 50% limited partnership interest in these cable systems, which constitutes an attributable interest under the Commission's rules. Insight Communications Company, L.P. ("Insight Communications"), owns a 50% limited and general partnership interest in Insight, and is the entity that manages the Insight cable systems.

⁷ The apartment building has approximately 451 units.

The four SMATV systems are:

- Lions Creek, 500 Lions Creek Circle, Noblesville, IN – 502 units/254 subscribers
- AMLI of Connor Farms, 11400 Gables Drive, Fishers, IN – 300 units/161 subscribers
- Northwood of Franklin, 2018 Cedar Lane, Franklin IN – 100 units/29 subscribers
- Westminster Village, 921 Parliament Place, Greenwood, IN – 438 units/87 subscribers

Although Comcast holds an attributable interest in the Insight cable systems, it does not manage these systems. It therefore is not in a position to implement the necessary service adjustments and system construction that will ensure that the four SMATV systems are fully integrated into the Insight franchised cable service serving the same areas. Comcast is consequently seeking to sell these SMATV systems to Insight. It has been diligently negotiating a sale agreement with Insight, and expects to enter into such an agreement within the next several weeks.

Upon entering into this agreement, Comcast and Insight will then need to take certain additional steps before they can consummate the agreement. Comcast will need to assign to Insight its rights under a transition services arrangement to provide billing and other services for these systems until they can be interconnected with Insight's cable systems. In addition, with respect to the Westminster Village SMATV system, Comcast must provide 30-days notice to the building owner that the building access agreement for this system is being assigned to Insight, and obtain the building owner's consent to this assignment, which may require the negotiation of a new access agreement for this building. Comcast must similarly obtain the consent of the building owners before it can assign its building access rights for the AMLI of Connor Farms and Northwood of Franklin systems, and may need to negotiate new building access agreements with these building owners as well. Comcast and Insight may also need to negotiate a new access agreement with the Lions Creek building owner because the current agreement covers systems and assets that are not part of the Lions Creek SMATV system and that are not being sold to Insight. It can be difficult to predict the time it will take to complete these negotiations with these various third parties, but Comcast will endeavor to finalize them as soon as possible to permit the consummation of its proposed agreement with Insight by the beginning of March.

A 45-day extension of the deadline set forth in the *Merger Order* will give Comcast additional time to take the numerous steps described above that are necessary to consummate the sale of these four SMATV systems to Insight. Comcast has requested that Insight complete the integration of the four SMATV systems into the Insight cable systems within 60 days of the consummation of the sale agreement and take any other appropriate steps to ensure that these systems are not in violation of the Commission's rules.

IV. Conclusion

For the reasons stated above, Comcast requests an extension of 45 days, to and including March 3, 2003, of the deadline set forth in the *Merger Order* for it to comply with the cable-SMATV cross-ownership rule. This will ensure the full integration of its SMATV systems in a manner that complies with the applicable franchise requirements and Comcast's contractual obligations while at the same time providing uninterrupted service to customers. Such an extension would provide Comcast a total of 3½ months to implement the system divestitures and other arrangements to comply with the Commission's cross-ownership rules. This short extension will not undermine the diversity and competition policies underlying the cable/SMATV cross-ownership rule, especially given the small number of subscribers involved. It is also well within the time period the Commission has afforded other parties to come into compliance with its media ownership rules following a merger involving multiple media outlets.⁸

Respectfully submitted,

/s/ James R. Coltharp

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⁸ See, e.g., *Shareholders of the Ackerly Group, Inc. (Transferor) and Clear Channel Communications, Inc. (Transferee)*, Memorandum Opinion and Order, 17 FCC Rcd 10828, ¶ 45 (2002) (granting merger applicants 12 months to come into compliance with the radio/television cross-ownership rule); *Application of Fidelity Television, Inc. (Assignor) and Viacom Television Stations Group of Los Angeles, LLC (Assignee)*, Memorandum Opinion and Order, 17 FCC Rcd 8567, ¶ 10 (2002) (granting six months to come into compliance with radio/television cross-ownership rule); *Telemundo Communications Group, Inc. (Transferor) and TN Acquisition Corp. (Transferee)*, Memorandum Opinion and Order, 17 FCC Rcd 6958, ¶ 57 (2002) (granting 12 months to come into compliance with the television duopoly rule); *Application of Counterpoint Communications, Inc. (Transferor) and Tribune Television Company (Transferee)*, Memorandum Opinion and Order, 16 FCC Rcd 15044, ¶ 13 (2001) (granting six months to come into compliance with the television/newspaper cross-ownership rule).